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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. [redacted] 43

N. L. LINER et al.,
Petitioners,

vs.

JAFCO, INC., et al.,
Respondents.

On Writ of Certiorari to the Court of Appeals
of Tennessee, Eastern Section.

BRIEF FOR PETITIONERS.

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IN THE

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No. 628.

N. L. LINER et al.,
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JAFCO, INC., et al.,
Respondents.

On Writ of Certiorari to the Court of Appeals of Tennessee, Eastern Section.

BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The opinion of the Court of Appeals of Tennessee, Eastern Section, was rendered on January 12, 1962 (R. 93).

A petition for certiorari to the Supreme Court of Tennessee was denied without opinion by the Supreme Court of Tennessee on September 28, 1962 (R. 107).

JURISDICTION.

The jurisdiction of this Court rests upon 28 U. S. C., Sec. 1257 (3). Petitioners, labor unions and their members, have been enjoined by a state court in Tennessee

which lacks jurisdiction inasmuch as the comprehensive Federal Labor Management Relations Act of 1947 has preempted this field of regulation and closed it to parallel state action.

The denial of certiorari by the Supreme Court of Tennessee made effective the decision of the Court of Appeals of Tennessee as the final judgment rendered by the highest court of Tennessee in which a decision could be had.

QUESTION PRESENTED.

Do the Tennessee Courts have jurisdiction to enjoin peaceful picketing by unions, protesting working conditions or work practices of an employer, when the contention is made by the employer that there is no "labor dispute" or "interstate commerce" involved and state laws prevail, but the evidence shows that the dispute and commerce involved were arguably within the meaning of the Labor Management Relations Act and the commerce involved meets the standards set by the National Labor Relations Board, and the matters in dispute had never been presented to the National Labor Relations Board for determination?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional provision involved is found in the Constitution of the United States, Article VI, second sentence, as follows:

> "This Constitution, and Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall

be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Pertinent statutory provisions which are printed in Appendix A, infra, p. 19 ff., are as follows: Pertinent portions of the Labor Management Relations Act of 1947, viz.: 29 U. S. C., Sec. 152 (7) and (9), 61 Stat. 137; 29 U. S. C., Sec. 157, 61 Stat. 140, 29 U. S. C., Sec. 158 (b) (4), 73 Stat. 525, 542, 545; Tennessee Statutes relating to declaratory judgments, Secs. 23-1102, 23-1103; and Tennessee Statutes relating to breach of contracts, Sec. 47-1706, and right-to-work laws, Secs. 50-208 and 50-209.

STATEMENT.

Petitioners, Chattanooga Building Trades Council, AFL, Local 846 of the Hod-Carriers, Building and Common Laborers Union of America, and its International, Hod-Carriers, Building and Common Laborers Union of America are labor organizations and their individual officers and members affiliated with the AFL-CIO. Respondent, Jafco, Inc., is a company engaged in building a large shopping center within the City of Cleveland, Tennessee. Respondent Rea Construction Company, the prime contractor, is a corporation engaged in general building contractual work in several states. Substantial interstate shipments of materials purchased outside the state of Tennessee were required for this project. Rea Construction Company was a non-retail employer who had an annual inflow and outflow of goods and services from or to persons outside the state several times over the jurisdictional yardstick of $50,000.00 as set by the National Labor Relations Board. The question of interstate commerce is hereinafter discussed on pages 6, 10-13. The complaint alleged that the respondents were building a shopping center to cost in the neighborhood of two million

dollars and when completed there would be many tenants (R. 1-8). Respondents and petitioners became embroiled in a labor dispute by reason of the following facts:

The stockholders of the Rea Construction Company also own, or have substantial interests in another construction company, J. H. Jones Construction Company, and both of these companies have home offices located in Charlotte, North Carolina. Petitioners introduced testimony to show that the respondent, Rea Construction Company, operates under the lowest possible working conditions while its sister-corporation, Jones Construction Company, works under union contracts, pays the prevailing wage scales, and otherwise complies with area working conditions (R. 54-55, 80-82).

It was argued to the Court that the purpose of having two separate companies operating as aforesaid was to circumvent the NLRA by having the Jones Construction Company to work in areas where there was at least some union support and the courts would permit informational picketing of a company like Rea Construction Company. On the other hand, the Rea Construction Company worked in areas wherein it could underbid competitors due to its lower wage scales and working conditions and where the company hoped to obtain a state court injunction against all picketing.

Soon after the construction work began one of the Chattanooga Hod-Carriers' business representatives stopped at the job site and the colored laborers explained the low rate of pay they were receiving and asked their union representative if something could be done (R. 49). The Chattanooga Building Trades had already considered the placing of a picket at the job site (R. 54).

On August 8, 1960, respondent N. L. Liner, a member of the local Hod-Carriers' Union appeared on the scene

of the construction with a picket sign which stated as follows:

> "Rea Construction Company not under contract with Chattanooga Building Trades Council, AFL" (R. 4).

There was no complaint that the picket banner misstated the facts or was misleading. There was no complaint of violence, mass picketing or such. The respondents concluded from mere picketing that the purpose of the picketing was to force a breach of the contracts between the respondents and their subcontractors which would be unlawful under Tennessee laws.

The bill of complaint alleged that petitioners were engaged in unlawful conduct in attempting to cause breaches of contracts which would be unlawful under the Tennessee Code Annotated, Sections 47-1706, 50-208 and 50-209 (R. 1-8). Within a matter of minutes petitioners were stopped from peaceful picketing by an ex parte injunction issued by a state court.

It was the contention of the petitioners that they had the right to establish a single picket to advertise the truth and permit the public in Cleveland and vicinity to know of the dispute. The position of the petitioners was and is that the picketing was protected under Section 7 of the Act, but assuming that respondents' contention was true, the activity was clearly covered by Section 8 (b) (4) (i) (ii) of the Act. In either event a controversy was presented that could be resolved only by the National Labor Relations Board.

SUMMARY OF ARGUMENT.

The Tennessee Court of Appeals in its decision quoted verbatim the decision of the Trial Court in which the following statement was made:

> "Defendants' principal contention involves the question of the Court's jurisdiction. Their able solicitors argued that the National Labor Relations Board has sole and exclusive jurisdiction because interstate commerce is involved here.
>
> "The Court is of opinion and therefore finds that the erection of a shopping center does not involve interstate commerce. It is a localized action and by no definition of the term can it be said that this operation amounts to interstate commerce. But, if it did, there was no labor dispute" (R. 95).

Later in the Opinion it was held that all questions had become moot as the construction project was completed (R. 97).

The points for argument are clearly focused by the above ruling which was rendered on January 12, 1962. The Tennessee Courts in effect held that it was for state courts to decide whether or not there is a "labor dispute" and whether "interstate commerce" is involved. This Court held, on June 11, 1962, in the case of Marine Engineers Beneficial Association v. Interlake Steamship Co. et al., 370 U. S. 173, as follows:

> "The task of determining words defined by the Labor Management Relations Act must in any doubtful cases begin with the National Labor Relations Board whenever a reasonably arguable case is made to that effect."

The action of the Tennessee Courts is in direct conflict with this Court's opinion in the Interlake case. As was

pointed out in the appeal to the Tennessee Court of Appeals (R. 91), the interpretation of the terms within the Labor Management Relations Act arguably should be left to the tribunal which Congress has established to administer the Act.

This court has held that a cause of action is not rendered moot by the completion of a construction project, **Local 74, United Brotherhood of Carpenters v. NLRB, 341 U. S. 707.** If state courts can arbitrarily take jurisdiction of labor cases, hold the cases until the construction project is completed, due to inherent delays in litigation, and then dismiss the case as being moot, the underlying disputes will never be resolved for the reason that on the next construction project one can expect the same result.

In the case of **San Diego Council v. Garman, 359 U. S. 236,** this Court in referring to its previous decisions of Weber and Guss held that to allow the states to control activities which potentially are subject to federal regulation involves too great a danger of conflict with national labor policy.

The Tennessee Courts completely ignored the federal questions and rendered a decision without citing or referring to any Federal laws or controlling decisions. The ruling by the State Court is such as to defeat the plain legislative intent of Congress.

ARGUMENT.

I.

Words defined by the Labor Management Relations Act must, in a doubtful case, begin with the National Labor Relations Board.

Labor Dispute.

The term "labor dispute" is defined by Section 2 (9) of the National Labor Relations Act as follows:

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer or employee."
>
> 29 U. S. C., Sec. 152.

In the case of **American Federation of Labor v. Swing, 312 U. S. 321**, it was expressly held that a requirement that there be an employer-employee relationship would be unconstitutional. The Tennessee Supreme Court followed the Swing case in **Watson v. Wilson, 187 Tenn. 402, 215 S. W. 2d 801.** In the Watson case the Tennessee Supreme Court held that a Union could peacefully picket a place of business where it had no members at all and did not seek or hope to have any.

The facts in the present case as to the type of labor dispute are almost identical with those in the case of **Local No. 438, Construction and General Laborers Union, AFL-CIO v. S. J. Curry, decided January 21, 1963, ... U. S. ...; 83 S. Ct. 531.**

More recent decisions of sister states were cited to the Tennessee courts at each stage of the hearings. The Texas case of **Ex parte Dilley, 334 S. W. 2d 425**, is almost identical to the present labor dispute. In that case there was picketing at a construction site to protest working conditions. The Supreme Court of Texas did not hesitate to say that the dispute was arguably for the National Labor Relations Board. The Washington case of **Freeman v. Retail Clerks Union, 363 Pac. 2d 803**, decided July 20, 1961, was also cited to the Court wherein the Supreme Court of Washington stated there was no labor dispute between the employer and its employees, that the pickets were not employees and that the union had no contractual relationship with the employees, actual or potential. The Washington court held that the matters were arguably for the National Labor Relations Board as the picketing was subject to Sections 7 or 8 of the Labor Management Relations Act. The South Carolina Supreme Court decision, in the case of **Piedmont Shirt Company v. Amalgamated Clothing Workers, 115 S. E. 2d 499**, was also cited as another case wherein there was no employer-employee relationship, actual or potential.

The only conclusion that can be drawn from the decision of the Tennessee Court of Appeals is that there must be an employer-employee relationship, or at least representatives of the union must discuss the matter with the employer before picketing would be permissible. Petitioners well remember the case of **Howard v. Haven, 198 Tenn. 572, 281 S. W. 2d 480**, originating under the same trial judge. In that case there was a conversation between a union business representative and an employer, and based upon that conversation the trial court held that the purpose of the picketing that followed was to cause a breach of contract and the non-union contractor who was dismissed from the job was entitled to treble damages under state law. The plight of the petitioners now under

Tennessee law is that if a union merely discusses a controversy with an employer and someone is discharged, the union will be subjected to a damage suit for treble damages. In the event there is no conversation an injunction will issue prohibiting picketing because there is no labor dispute.

It was argued to the Tennessee Court of Appeals that the facts presented a labor dispute concerning terms or conditions of employment in that respondents do not recognize or have union contracts. In the Brief filed with the Court of Appeals it was stated:

> "It is respectfully submitted that the interpretation of this term arguably should be left to the tribunal which Congress has left to administer the Act" (R. 91).

The action of the Tennessee Courts is in direct conflict with this Court's opinion rendered thereafter in the case of **Marine Engineers Beneficial Association v. Interlake Steamship Company et al.**, 370 U. S. 173, wherein this Court specifically held that the task of determining words defined by the Act must, in any doubtful case, begin with the National Labor Relations Board whenever a reasonably arguable case is made to that effect.

Commerce.

The term "affecting commerce" is defined by Section 2 (7) of the National Labor Relations Act as follows:

> (7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. 29 U. S. C., Sec. 152.

It is also submitted that the question of "affecting commerce" should be left to the National Labor Relations Board when a reasonably arguable case is made to that effect.

This Court held in **Labor Board v. Faiblatt, 308 U. S. 601**, that the power of Congress to regulate interstate commerce is plenary and extends to all commerce be it great or small. The Faiblatt case was followed by the case of **NLRB v. Denver Building Trades Council, 341 U. S. 675.** In 1957 the cases of **Amalgamated Meatcutters v. Fairlawn, Inc., 353 U. S. 20**, and **Gus v. Utah Labor Relations Board, 353 U. S. 23**, were acted upon by this Court. This Court again made it clear that Congress had pre-empted the jurisdiction into the National Labor Relations Board, and it was up to Congress to make any changes. In 1959 the United States Congress acted and in November, 1959, the new law went into effect. Under **Section 701 of the Landrum-Griffith Act, 29 U. S. C. 164**, the Board was authorized to decline to assert jurisdiction where, in the opinion of the Board, the effect on commerce was not substantial. It was specifically provided that the Board was not able to decline jurisdiction over any labor dispute which it would have asserted jurisdiction under the standards prevailing on August 1, 1959.

Considering the possibility that the Trial Court might fail to take judicial cognizance of the Board's yardstick, counsel for petitioners wrote the National Labor Relations Board, Tenth Region, at Atlanta, Georgia, for an advisory opinion (R. 68) and received a reply (R. 70) which outlined the Board's jurisdictional standards.

The Board's jurisdictional standards require a showing that a non-retail employer has annual inflow and outflow of goods and services from or to persons outside the State amounting to $50,000.00. See **Siemon's Mailing Service,**

122 NLRB No. 13, and the case of **Lennox-Haldman Co., 127 NLRB No. 49.** The Board will consider not only the operations of the primary employer, but all of the operations of subcontractors or secondary employers involved. See **McAllester Transfer, Inc., 110 NLRB No. 224; Reilly Cartage Co., 110 NLRB No. 233,** and **Carpenters, etc., 111 NLRB 1025.**

The complaint as amended does not state whether respondents are engaged in intrastate or interstate commerce. The proof shows conclusively that the complainant, Rea Construction Company, is engaged in **interstate** commerce.

The principal witness of the aforesaid respondent was Fritz Diehl, who is in charge of the Rea Construction Company at Cleveland, Tennessee. Mr. Diehl testified that since the job in question started in July, 1960, the Rea Construction Company had spent about one million dollars of which one-half was for materials (R. 26). Diehl's testimony was given on February 22, 1961 (R. 19). Diehl further estimated about seventy-five percent of the materials were purchased within the state and twenty-five percent outside the state (R. 35). On cross-examination Mr. Diehl was requested to check his figures with his Tennessee office as well as the principal office in North Carolina and file an accurate statement as to the materials purchased outside the state. This was done and filed as Exhibits 1 and 2 to the testimony of Fritz Diehl. Item 1 (c) shows that materials bought from sources outside of Tennessee to be $147,099.67 (R. 43). Accordingly, it is unnecessary to consider the other purchases at the involved projects of Rea Construction Company in North Carolina, Tennessee and Georgia. The NLRB had set its yardstick for commerce flowing into or out from a non-retail employer at $50,000.00 prior to 1959, and Congress, in the Landrum-Griffith Act, froze the yardstick at this point.

By the above yardstick a subcontractor, Lonas Construction Company, working at the time of the dispute, was also engaged in interstate commerce, and had been for two previous years. See testimony of Donald R. Gaither (R. 72-80), wherein he itemized purchases from a company totaling over $50,000.00 a year. The stipulation as to latter company which sold the machines shows that they were purchased from out of the state (R. 71-72).

Solicitors for petitioners were somewhat shocked when the Trial Court and Court of Appeals made no reference to the above facts and controlling cases, and merely stated in the written opinions that only intrastate commerce was involved. The record affirmatively shows that interstate commerce was involved.

II.

Question of Mootness.

A case is not moot because a project which precipitated a strike has been completed when a reasonably arguable case is made to the effect that the matters in controversy should be resolved by the National Labor Relations Board.

The question of mootness was not before the Honorable Tennessee Court of Appeals, yet it fortified its opinion by holding that all questions were moot. The court then proceeded to render a declaratory judgment and adopted the opinion of the Trial Court. Petitioners, in an earlier attempt to advance the case on the trial docket of the Court of Appeals had filed a motion stating that by the terms of the contracts respondents had with various construction companies the work was to be completed as of August 1, 1961. Petitioners' Motion for Advancement set forth the following:

> "The plight and predicament of appellants is very serious. All of the thousands of members covered by the Chattanooga Building Trades are engaged in the

construction business. If they have a grievance which they wish to publicize they have a limited time to do so—only during the course of construction. Most projects require a year or less for completion. If the Trial Court takes a position which the appellants consider arbitrary or contrary to law they have no means to have the decision of the lower court reviewed. It is respectfully submitted that the employer complainant will delay the case with every legal means once a temporary injunction has been obtained. Once the construction project is over and the case becomes moot the employer will dismiss its bill and pay the costs rather than risk an appellate decision. Thus, the employer is in the enviable position in the field of labor-management of having the Trial Court to settle labor disputes by injunctive process." (original record 289-295).

The Court of Appeals refused to advance the case for hearing, and this cause came on to be heard for final argument on September 7, 1961. At that time the Court of Appeals made inquiry as to the construction completion date and both petitioners and respondents agreed that the construction would continue for several weeks due to various construction delays. This fact is set forth in the sworn petition to the Tennessee Supreme Court (R. 101-102). The Court of Appeals proceeded to hear argument, accept briefs and no further evidence was submitted on the question. The Court of Appeals held the case for judicial determination until January 12, 1962 (R. 93).

If the case became moot it did so only because the Tennessee State courts arbitrarily and illegally took jurisdiction. The case is not moot for the following reasons:

This Court has held, in the enforcement of National Labor Relations Board orders, that questions are not moot

based upon the possibility of a recurrence, **NLRB v. Penna. Greyhound Lines, 303 U. S. 261.** This matter is arguably before the National Labor Relations Board. It is the desire of the petitioners to picket the respondents in the future under the same conditions, and unless relief is granted by this Honorable Court this will not be permitted under the law as interpreted by the Tennessee courts.

The Tennessee courts have the right to make advisory or declaratory judgments by Sections 23-1102 and 23-1103 of the Tennessee Code Annotated, Appendix A. The Court of Appeals for the Eastern District of Tennessee made such an advisory opinion, and it is respectfully submitted that respondents are estopped from raising a question of mootness. If a court makes an advisory opinion, then it logically follows that a higher court has the authority to review that advisory opinion.

This case is similar to the case of **Plumbers v. County of Door, 359 U. S. 354,** wherein the question of mootness was raised on oral argument before this Court but does not appear in the decision. A memorandum was submitted in that case, arguing that a case is not moot where, as here, (1) the injunction prohibits the petitioners from picketing at the location should the respondent contractor or any non-union employer be engaged to perform, repair or do maintenance work, (2) the underlying disputes between the petitioners and respondents have not been resolved, and (3) the petitioners' right under the state law to recover damages and court costs incurred in the course of resisting the issuance of the injunction is dependent upon the holding by this Court that the judgment below is erroneous.

Counsel for the labor unions involved herein, by coincident, was counsel for the unions in what was perhaps the first case under the Labor Management Relations Act of 1947; **Local 74, United Brotherhood of Carpenters and**

Joiners of America et al., and Ira A. Watson Co., Case No. 10-CC-1. In that case the picketing of which complaint was made ceased on the day before the 1947 amendments became effective. The facts presented by that case eventually reached this court through an appeal from the Sixth Circuit which had affirmed the order of the National Labor Relations Board. See Local 74, United Brotherhood of Carpenters v. NLRB, 341 U. S. 707, 715. This Court held as follows:

> "This case has not been rendered moot by the completion of the renovation project. * * * The use of such pressure on this renovation project was merely a sample of what might be repeated elsewhere if not prohibited. The underlying dispute between petitioners and Watson's has not been shown to have been resolved."

The same picketing in the above case also precipitated action in the state court which eventually was resolved by the Supreme Court of Tennessee. See **Watson v. Wilson, 187 Tenn. 402, 215 S. W. 2d 801.** The action of the State Court has been previously discussed herein under "Labor Dispute", at page 8.

The granting of a temporary injunction in the present case was conditioned by the granting of an injunction bond. The bond is still in full force and effect. Under Tennessee law a defendant, in a proceeding for a temporary injunction, is entitled to recover damages and costs upon an injunction bond in the event it is ultimately determined that an injunction was erroneously issued. Unless the Court rules on the question presented herein, petitioners will be precluded from raising the question upon remand to the state courts.

Where, as here, a timely claim of federal preemption is made in a state court injunction proceeding, the cause

should be presumed justiciable in the absence of a clear and convincing showing that the matter has become moot. Every building project is necessarily completed at some definite point in time. Inherent delays in litigating cases through state courts makes it impossible to bring the case to this Court as a practical matter until most buildings have been completed. E. G. **Local 74, United Brotherhood of Carpenters v. NLRB, 341 U. S. 707, 715.**

In the final analysis the action of the state court is in direct conflict with this court's decision in the case of **San Diego Council v. Garman, 359 U. S. 236,** wherein it was held that the governing consideration is that to allow the states to control activities that are potentially subject to federal regulations involves too great a danger of conflict with national labor policies.

Preemption.

The decision by the Tennessee Court of Appeals is similar to those decisions of the Tennessee Appellate Courts in the cases of **Kerrigan Iron Works v. Cook Truck Lines, 41 Tenn. App. 467, 296 S. W. 2d 379,** and **Farnsworth & Chambers v. Local Union 429, Electrical Workers, 201 Tenn. 329, 299 S. W. 2d 8,** which this Court reversed on May 27, 1957, **353 U. S. 968, 969.** The controlling cases of **San Diego Council v. Garman, 359 U. S. 236,** and **Marine Engineers Beneficial Association v. Interlake Steamship Company, 370 U. S. 173,** were not referred to by the Tennessee Courts.

The Court of Appeals for the Eastern Section has very strong views of its own in labor-management questions, perhaps best illustrated by the concurring opinion in the case of **Volunteer Electric Corp. v. Gann,** decided September 8, 1960, not reported in the official reports but reported at **46 LRRM 3049.**

It is submitted that unless the present decision is reversed the checker-board system which this Court condemned in the case of **Garner v. Teamsters, 346 U. S. 485,** will be given new life. Prior to the present decision most of our state trial courts recognized the doctrine of preemption.

Under the present decision which is binding on every court in the State of Tennessee the doctrine of preemption no longer exists. Labor-management disputes are left to the whims of trial judges in resolving industrial disputes.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the Court below, the Court of Appeals of Tennessee, Eastern Section, should be reversed.

.....

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APPENDIX A.

Pertinent Statutory Provisions.

29 U. S. C., Sec. 152. **Definitions.**

When used in this subchapter—

"• • •

(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

• • •

(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer or employee."

29 U. S. C., Sec. 157. **Right of Employees as to Organization, Collective Bargaining, Etc.**

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

29 U. S. C., Sec. 158 (b) (4).

"(b) It shall be unfair labor practice for a labor organization or its agents—

* * *

(4) (i) To engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if

another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work;"

Tennessee Code Annotated, Section 23-1102. General Power of Courts.

"Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree."

Tennessee Code Annotated, Section 23-1103. Construction of statutes and written instruments.

"Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder."

Tennessee Code Annotated, Section 47-1706. Procurement of breach of contracts unlawful—Treble damages.

> "It shall be unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of said contract; and the party injured by such breach may bring his suit for said breach and for such damages."

Tennessee Code Annotated, Section 50-208. Denial of employment because of affiliation or nonaffiliation with labor union unlawful.

> "It shall be unlawful for any person, firm, corporation or association of any kind to deny or attempt to deny employment to any person by reason of such person's membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind."

Tennessee Code Annotated, Section 50-209. Contracting for exclusion from employment because of affiliation or nonaffiliation with labor union unlawful.

> "It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind."